

Olkaria I and IV

Kenya

Complaint SG/E/2014/07

Complaint SG/E/2014/08

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

MEDIATION REPORT

12 March 2018

Prepared by

Complaints Mechanism

External Distribution

Complainants

Promoter

Internal Distribution

Management Committee

Secretary General

Inspector General

EIB services concerned

The EIB Complaints Mechanism

The EIB Complaints Mechanism provides the public with a tool enabling alternative and pre-emptive resolution of disputes in cases where the public feels that the EIB Group did something wrong, i.e. if a member, or members, of the public consider(s) that the EIB has committed an act of maladministration. When exercising the right to lodge a complaint against the EIB, any member of the public has access to a two-tier procedure, one internal – the Complaints Mechanism Division (EIB-CM) – and one external – the European Ombudsman (EO).

If complainants are unhappy with the outcome of the EIB-CM's procedure, a confirmatory complaint may be submitted by the complainant within 15 days of the receipt of the EIB-CM's reply. Complainants who are not satisfied with the outcome of the EIB-CM's procedure and who do not wish to make a confirmatory complaint may also lodge a complaint of maladministration against the EIB with the European Ombudsman (EO).

The EO was created by the Maastricht Treaty of 1992 as an EU institution to which any EU citizen or entity may appeal to investigate any EU institution or body on the grounds of maladministration. Maladministration means poor or failed administration. This occurs when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights. Some examples, as cited by the European Ombudsman, are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal to provide information and unnecessary delay. Maladministration may also relate to the environmental or social impacts of the EIB Group's activities and to project cycle-related policies and other applicable policies of the EIB.

The EIB Complaints Mechanism is intended not only to address non-compliance by the EIB with its policies and procedures but to endeavour to solve the problem(s) raised by complainants such as those regarding the implementation of projects, notably through mediation.

For further and more detailed information regarding the EIB Complaints Mechanism please visit our website: <http://www.eib.org/about/cr/governance/complaints/index.htm>

Acknowledgements

The EIB-CM would like to thank all people and organisations with whom they have interacted during the initial assessment of this complaint and during the mediation process, and expresses its appreciation to the EIB staff that has provided the required information.

Without the support and valuable contributions of everybody concerned, the preparation of this report would not have been possible.

CONTENTS

1 THE COMPLAINT 5

2 THE PROJECT 5

3 THE INITIAL ASSESSMENT 5

4 THE CONCLUSIONS REPORT 6

5 THE MEDIATION PROCESS 6

6 IMPLEMENTATION 8

MEDIATION REPORT

Complainant: several individuals and representatives of the communities affected by the project

Date received: between July and September 2014

Subject of complaint: The complainants alleged that the Bank failed to monitor the involuntary resettlement of 4 villages, carried out for the extension of the Olkaria geothermal field, in accordance with the Resettlement Action Plan (RAP), the Bank's resettlement policies and its contractual obligations

1 THE COMPLAINT

1.1 In July 2014, the European Investment Bank's Complaints Mechanism (EIB-CM) received a complaint via email raising several issues concerning the involuntary resettlement that was due to take place in connection with the expansion of activities in the Olkaria geothermal field in Kenya. In August 2014, a second complaint – a letter sent via email and signed by representatives of the community – with similar allegations, was received. In September 2014, the Bank's operational services forwarded to the EIB-CM two additional written complaints concerning the same issues. During the first visit to the site in January 2015, the EIB-CM registered 40 additional petitioners that signed the complaints against the implementation of the RAP.

1.2 The World Bank (WB) is co-financing the project and its Inspection Panel (WB-IP) received a similar complaint in October 2014. As a result, the EIB-CM and the WB-IP coordinated their efforts and resources and signed a Memorandum of Understanding (MoU) setting out the general framework of the cooperation between the two accountability mechanisms, being understood that each would prepare a separate report with conclusions adapted to the policies and practices of the respective financial institutions.

2 THE PROJECT

2.1 The project is aimed at expanding the electricity generating capacity of the Olkaria geothermal steam field by extending the existing Olkaria I station by two 70 MWe units (units IV and V) and constructing two 70 MWe units at the Olkaria Domes field (Olkaria IV power station), including the required infrastructure, transmission lines and substations. The project area is located some 85 km northwest of the Capital Nairobi, partly in the Hell's Gate National Park, where other power stations (Olkaria I, II and III) are already in operation.

2.2 The EIB loan to the Government of Kenya amounts to up to EUR 119 millions and the project sponsor is KenGen, a Kenyan company established by the Ministry of Energy (MoE). The total project cost is estimated to be approximately EUR 1 billion. The project is co-financed by the Government of Kenya, the French Development Agency (AFD), the Japan International Cooperation Agency (JICA), the German Development Agency (KfW) and the World Bank.

3 THE INITIAL ASSESSMENT

3.1 In March 2015, the EIB-CM prepared an Initial Assessment Report (IAR) which included proposals on the way forward with two main measures : (i) a compliance review of the issues identified during the preparation of the IAR, to be carried out together with the WB-IP; and (ii) a problem-solving approach, by providing independent facilitation services to foster the dialogue between the complainants and the existing project organisation structures. The proposed way forward was accepted by the stakeholders (complainants and promoter).

4 THE CONCLUSIONS REPORT

4.1 On 11 November 2015, the EIB-CM issued the Conclusions Report with the findings of the compliance review.

4.2 The conclusions highlighted a number of positive results of the resettlement but also pointed out a number of shortcomings in the implementation of the Resettlement Action Plan (RAP), notably concerning the identification census, the restoration of livelihoods and in taking into account the interests of the vulnerable groups.

4.3 Furthermore during the investigation, the team identified other problems, notably the fact that the grievance mechanism put in place at the level of the project during the resettlement was not functional and that the Resettlement Action Plan Implementation Committee (RAPIC) put in place to give a voice to the community did not prevent some degree of distrust, between the community and the project promoter and amongst the community, to emerge.

4.4 The Conclusions Report also recommended the continuation of the implementation of the facilitation and problem-solving approach through mediation to address some of the structural and recurrent issues identified during the investigation.

5 THE MEDIATION PROCESS

5.1 The preparation

5.1.1 Following the release of the IAR, the Promoter and the Complainants accepted the EIB-CM proposal for engaging in a mediation process.

5.1.2 EIB-CM put in place a mediation team (composed of the mediation officer of EIB-CM and two local mediators) and the preparation for the mediation process started with a first site visit by the mediation team from 14 to 19 May 2015.

5.1.3 At the same time, a Memorandum of Understanding was signed with the World Bank which enabled the participation of the World Bank Grievance Redress Service (GRS) in the mediation as co-facilitator.

5.1.4 During this first site visit it became apparent that given the nature of the issues to be discussed during the mediation, representatives from the community should also be included in the discussions, together with the representatives of the complainants.

5.1.5 The local mediators had a number of meetings with all concerned on the subject of participation of the community in the mediation after which the RAPIC and the Community Advisory Council (CAC) accepted to participate in the mediation in representation of the community as a whole and of the villages' elders respectively.

5.1.6 A second site visit of the mediation team took place from 13 to 17 June 2015 to kick-off the preparation phase with all the parties involved (including RAPIC and CAC). After the kick-off, an important part of the preparation was dedicated to build, in coordination with the parties, the mediation process itself. As part of this discussion the parties were consulted on the number of participants from each group that should participate in the process and on who they thought should participate for instance as observers, as well as on the format of the meetings, languages, payments, etc.

5.1.7 The parties agreed to have an equal number and format of participants representing the complainants and the RAPIC and that the CAC would appoint representatives to participate as friends of the mediation in order to ensure and encourage fairness, openness, and proper decorum in the mediation dialogue, and in order to bring to the mediation space respect and traditional wisdom. They furthermore agreed that representatives of the Welfare Society, the Ministry of Energy and Petroleum, EIB-CM and WB would attend as observers of the process and, as far as WB and EIB-CM are concerned, in order to align the solutions with the findings of the Inspection Panel's Investigation report and the EIB-CM Conclusions report .

5.1.8 Furthermore, the local mediators supported the various parties in helping them selecting their representatives to sit at the mediation table, including organising information sessions to explain the mediation process, the number

of representatives that would participate and the qualities needed to participate in the meetings. The local mediators also attended as observers of the selection process for the representatives of the complainants.

5.1.9 The local mediators also organised a number of capacity building sessions with all the representatives selected, both separately and in some joint sessions, to prepare them for participation in the official mediation meetings. Most of the capacity building work was done with the community. Given the different interests present within each group of representatives, it was important, apart from the normal capacity building work to prepare for the negotiation, to get the representatives of the community to find a common ground amongst them before sitting with the representatives of the Promoter.

5.1.10 This preparatory phase was also used to start identifying the issues that all concerned would like to discuss during the mediation meetings.

5.2 The mediation

5.2.1 The first mediation meeting took place from 17 to 21 August 2015 and was dedicated to finalising the agenda for the mediation meetings. At the end of this first session a final agenda for discussion was established (annex 1).

5.2.2 The second mediation meeting took place from 16 to 18 September 2015 and was dedicated to listening to each party's concerns in relation to each of the items on the agenda and to the exploration of possible solutions to address the concerns of all the parties. During the exploration of the solutions, and given the linkage between many of the issues, the parties came to the conclusion that it would be better to package the solutions in the form of an action plan that would make it easier for all concerned to evaluate the extent to which their concerns would be addressed.

5.2.3 The parties agreed that Kengen should prepare such a package with the help of the mediators and consultants, as necessary, and the mediation table would sit again to negotiate the package once presented by Kengen.

5.2.4 Kengen started working on the preparation of the package, with the support of the mediators and some consultants. Preparation sessions were held with the mediation team notably from 30 November to 3 of December 2015 and from 27 February to 4 March 2016.

5.2.5 Concomitantly, a team of consultants, supported by the WB, started working on a post-resettlement survey to help with the preparation of the package. The main aims of the survey were to identify vulnerable households, identify households that may have lost their income because of the resettlement and collect data to enable vetting of the additional list of PAPs provided by the complaints against the original census conducted before the resettlement. The final report by the consultants was delivered in April 2016.

5.2.6 Upon receipt of the report, Kengen finalised the package and a mediation meeting took place from 23 to 27 May 2016. Kengen package was negotiated during the first 3 days and once a final version was agreed, the representatives of the community went back to the community on 26 May 2016 to discuss it with the community. On 27 May 2016 the mediation table reconvened and the package was again discussed to integrate the feed-back from the community.

5.2.7 On 27 May 2016 agreement was reached at the mediation table and an agreement was signed detailing all the actions agreed upon between the parties. The parties also agreed that the implementation of the agreement would be monitored by the WB and EIB-CM.

5.2.8 The agreement however would not become effective before its contents would be disseminated to the community at a public meeting during which the responsibilities of the community relative to the agreement would be outlined. This meeting took place on 10 June 2016 and the agreement was accepted by the community.

5.2.9 Furthermore, the community undertook to vacate the Cultural Center prior to the agreement entering into effect. This proved to be more lengthy than expected because the residents of the Cultural Center wanted the issue of transportation resolved prior to them vacating the village. The local mediators supported the discussions amongst the community that led to the vacation of the Cultural Center on 31 August 2016 and the signature of an agreement providing for transportation to and from the Cultural Center on 29 September 2016.

5.2.10 The agreement was thus declared effective on 29 of September 2016 (annex 2).

5.2.11 The effectiveness of the agreement having taken place nearly 3 months after the expected date, all the deadlines set in the agreement were postponed by the same number of days and the new deadlines were sent by the mediators to all the participants in the mediation.

6. IMPLEMENTATION

6.1 At the request of the parties, EIB-CM, through the mediation team, and the World Bank engaged to monitor implementation of the actions agreed in order to ensure effective implementation.

6.2 Implementation of the agreement started upon it becoming effective and is currently on-going. A number of actions have been started, notably the Cultural Center was vacated by the community as agreed. The setting-up of the Clinic to re-examine the cases submitted by the complainants took place in October and November 2016 and a total of 236 cases were reviewed, of which 8 cases of non-compensated PAPs were identified. The findings of the clinic are currently under implementation. Works on the roads and water networks have also started and are fairly advanced. A consultant was hired to produce a study on increasing the productivity of the land in the relocation site and the study is in its final stages and implementation should begin soon after the study is released. The vulnerable PAPs were identified and their specific needs captured and under implementation. A number of training sessions on livelihood restoration for women and youth has taken place, as well as training concerning the Welfare Society, and the training programme is continuing as foreseen in the agreement.

6.3 A first joint monitoring mission by EIB-CM and World Bank took place in May 2017 and the local mediators meet regularly with Kengen and the community and go on site to check on the advancement of the implementation of the agreement.

6.4 It is expected that the agreement will be fully implemented by end 2018 and EIB-CM and World Bank will continue monitoring implementation of the agreement until it is fully implemented.